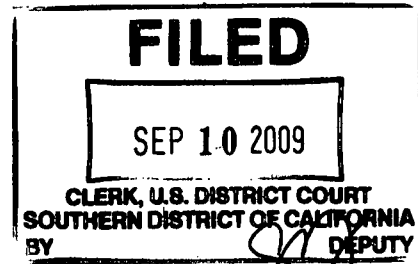


ADLER LAW FIRM
Joel D. Adler (SBN 52979)
101 Montgomery Street, Suite 2050
San Francisco, CA 94104
Telephone: (415) 433-5333
Facsimile: (415) 433-5334
Email: adlerlaw@adlerlaw.net

Attorney for Plaintiff
FISH & RICHARDSON, P.C.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FISH & RICHARDSON, P.C., a
Massachusetts Professional
Corporation,

Plaintiff,

v.

WHO'S YOUR DADDY, INC., a
California Corporation,

Defendant.

Case No. **09 CV 1993 W POR**
**COMPLAINT OF PLAINTIFF FISH &
RICHARDSON, P.C. TO FORECLOSURE
ON SECURITY INTEREST IN
TRADEMARKS**

Plaintiff FISH & RICHARDSON, P.C. ("plaintiff") alleges:

JURISDICTION

1. This action arises under a federal statute, 28 U.S.C. § 1338, giving the district courts original jurisdiction over any civil action arising under any Act of Congress relating to, *inter alia*, trademarks.

VENUE

2. Venue is proper in the Southern District of California under 28 U.S.C.A. § 1391(b)(1) because the defendant in this action resides in this District.

///

8273

- 1 -

Case No.:

CLAIM FOR RELIEF

3. Plaintiff is a law firm organized as a professional corporation under the laws of the State of Massachusetts.

4. Defendant WHO'S YOUR DADDY, INC. ("defendant") is a California corporation.

5. By contract dated February 23, 2005, plaintiff entered into an agreement with defendant and a corporate entity related to defendant's business activities, "Who's Your Daddy, Inc., which will do business in California as WYDY, Inc., a Nevada Corporation" ("the Nevada Corporation"), by which plaintiff would provide legal services to and incur costs on behalf of the two corporations.

6. Defendant and the Nevada Corporation fell in arrears of payment of their monthly invoices to plaintiff.

7. Plaintiff, on the one hand, and defendant and the Nevada Corporation on the other, agreed to compromise the debt and settle all disputes between them according to the terms of the "Settlement Agreement and Release" the parties signed on September 27, 2006. Attached hereto as Exhibit 1, and incorporated herein by this reference, is a true and correct copy of the Settlement Agreement and Release.

8. The Settlement Agreement and Release at paragraph 3, "Grant of Security Interest", provides:

WYD CA [defendant] hereby grants Fish [plaintiff] a first priority security interest in all of the Trademarks owned by it and all associated goodwill. Fish shall record a UCC Financing Statement reflecting such security interest. Fish agrees to subordinate its security interest to any bona fide third party lender that provides financing to the Company that results in the payment contemplated by Section 1 (iii) above. Fish shall release its security interest at such time as all amounts payable to it hereunder have been paid.

///

///

ADLER LAW FIRM
 101 MONTGOMERY STREET, SUITE 2050
 SAN FRANCISCO, CALIFORNIA 94104
 TELEPHONE: (415) 433-5333 FACSIMILE: (415) 433-5334

9. Plaintiff filed the UCC Financing Statement referenced in the Settlement Agreement and Release with the California Secretary of State on September 27, 2006. Attached hereto as Exhibit 2, and incorporated herein by this reference, is a true and correct copy of plaintiff's UCC Financing Statement.

10. Defendant and the Nevada Corporation failed make the payments to plaintiff required by the terms of the Settlement Agreement and Release thereby completely breaching the agreement.

11. On May 15, 2008, plaintiff filed an action in the Superior Court of California in and for the County of San Diego, Case No. Case No. 37-2008-00083932-CU-CL-CTL, entitled *Fish & Richardson, P.C. v. Who's Your Daddy, Inc., a California Corporation; Who's Your Daddy, Inc., which will do business in California as WYDY, INC., a Nevada Corporation* ("the state action").

12. Plaintiff's complaint in the state action consisted of five causes of action.

13. The first four causes of action were against defendant and the Nevada Corporation jointly, and were for (1) Breach of Contract [Settlement Agreement]; (2) Common Counts; (3) Breach of Contract [attorney-client fee agreement]; (4) and Common Counts.

14. The first and second causes of action were based on the defendants' breach of the Settlement Agreement and Release. The third and fourth causes of action were based on the defendants' failure to pay plaintiff for legal services and costs incurred after the effective date of the Settlement Agreement and Release.

15. The fifth cause of action in the state action was for Foreclosure of Collateral--Security Interest in Trademarks.

16. On or about October 30, 2008, plaintiff applied to the United States Patent and Trademark Office ("USPTO") to record liens on each of defendant's thirteen trademarks. Attached hereto as Exhibit 3, and incorporated herein by this reference, is a true and correct copy of plaintiff's application to the USPTO.

///

ADLER LAW FIRM
101 MONTGOMERY STREET, SUITE 2050
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (415) 433-5333 FACSIMILE: (415) 433-5334

17. The USPTO recorded plaintiff's liens and sent plaintiff a "Notice of Recordation of Assignment Document" dated November 3, 2008. Attached hereto as Exhibit 4, and incorporated herein by this reference, is a true and correct copy of the Notice of Recordation of Assignment Document and its supporting documentation.

18. On April 1, 2008, plaintiff filed a Request for Dismissal Without Prejudice of its cause of action for Foreclosure of Collateral--Security Interest in Trademarks because the state court was without jurisdiction to adjudicate a dispute over the ownership of the trademarks. Attached hereto as Exhibit 5, and incorporated herein by this reference, is a true and correct copy of the Dismissal.

19. Plaintiff brought a Motion for Summary Judgment, or in the Alternative, for Summary Adjudication, of its four remaining claims against defendant and the Nevada Corporation which was heard on April 17, 2009 by the Hon. Steven R. Denton.

20. Judge Denton ruled in plaintiff's favor on all four remaining causes of action and granted plaintiff's motion for summary judgment. Attached hereto as Exhibit 6, and incorporated herein by this reference, is a true and correct copy of Judge Denton's May 13, 2009 Order granting the motion.

21. Judge Denton found that defendant and the Nevada corporation breached the Settlement Agreement and Release with plaintiff.

22. On June 11, 2009 judgment was entered in plaintiff's favor and against defendant and the Nevada corporation, jointly and severally, for \$348,651.18 plus \$1,788.34 in costs. The judgment included continuing interest from May 21, 2009. Attached hereto as Exhibit 7, and incorporated herein by this reference, is a true and correct copy of the judgment.

23. Defendant has breached the Settlement Agreement and Release and plaintiff is entitled to foreclose on the security it was given against the breach in said agreement, "a first priority security interest in all of the trademarks owned by it and all associated goodwill."

24. 15 U.S.C. §1119 provides that:

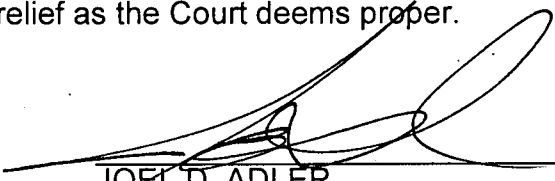
1 In any action involving a registered mark the court may
2 determine the right to registration, order the cancelation of
3 registrations, in whole or in part, restore canceled
4 registrations, and otherwise rectify the register with respect
5 to the registrations of any party to the action. Decrees and
6 orders shall be certified by the court to the Director, who
7 shall make appropriate entry upon the records of the Patent
8 and Trademark Office, and shall be controlled thereby.

9
10 RELIEF REQUESTED

11 WHEREFORE, plaintiff demands judgment against defendant as follows:

- 12 1. That the Court find plaintiff to be the owner of the thirteen registered
13 trademarks against which plaintiff recorded its security agreement as stated in the Notice
14 of Recordation of Assignment Document dated November 3, 2008, attached hereto as
15 Exhibit E, and certify an Order to the Director of the United States Patent and Trademark
16 Office to that effect; and
- 17 2. That plaintiff recover costs of suit; and
- 18 3. For such other and further relief as the Court deems proper.

19 Dated: September 2, 2009

20
21
22
23
24
25
26
27
28

JOEL D. ADLER
Attorney for Plaintiff
FISH & RICHARDSON, P.C.

ADLER LAW FIRM
101 MONTGOMERY STREET, SUITE 2050
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (415) 433-5333 FACSIMILE: (415) 433-5334

Fish & Richardson v. Who's Your Daddy
EXHIBITS TO COMPLAINT

TABLE OF CONTENTS

Exhibit 1	Septemer 27, 2006 Settlement Agreement and Release
Exhibit 2	September 27, 2006 UCC Financing Statement
Exhibit 3	October 30, 2008 USPTO Application
Exhibit 4	November 3, 2008 Notice of Recordation of Assignment Document
Exhibit 5	April 1, 2009 Request for Dismissal
Exhibit 6	May 19, 2009 Order
Exhibit 7	May 21, 2009 Judgment

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made and entered into as of this 27th day of September, 2006 by and between Who's Your Daddy, Inc., a California corporation ("WYD CA"), Who's Your Daddy, Inc., a Nevada corporation ("WYD NE") (WYD CA and WYD NE are collectively referred to herein as the "Companies") and Fish & Richardson P.C. ("Fish").

RECITALS

WHEREAS, the Companies are in arrears in the payment of legal fees to Fish in the amount of \$395,405 as of August 14, 2006; and

WHEREAS, the parties have concluded that it is in their best mutual interest to resolve their issues on the terms set forth below; and

NOW, THEREFORE, in consideration of the promises and covenants set forth in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto expressly agree as follows:

1. **Settlement Payments.** The Companies have agreed to pay, and Fish has agreed to accept, payment for outstanding legal fees as follows:

(i) one hundred thousand dollars (\$100,000) on or before September 30, 2007, with minimum monthly payments as follows: (a) \$2,500 per month commencing November 1, 2006 until January 1, 2007; (b) \$5,000 per month commencing February 1, 2007 until April 1, 2007; (c) \$7,500 per month commencing May 1, 2007 until July 1, 2007; and (d) \$10,000 per month on August 1, 2007 until September 30, 2007. Any unpaid balance of this \$100,000 shall be paid on September 30, 2007; and

(ii) two hundred thousand dollars (\$200,000) shall be paid at the closing of any financing in which either of the Companies raises an aggregate amount of financing equal to \$3,500,000 or more.

2. **Interest.** In the event that the Companies fail to make any of the payments required hereby, such unpaid amounts shall bear interest at the highest rate permitted by applicable law.

3. **Grant of Security Interest.** WYD CA hereby grants Fish a first priority security interest in all of the Trademarks owned by it and all associated goodwill. Fish shall record a UCC Financing Statement reflecting such security interest. Fish agrees to subordinate its security interest to any bona fide third party lender that provides financing to the Company that results in the payment contemplated by Section 1 (iii) above. Fish shall release its security interest at such time as all amounts payable to it hereunder have been paid.

4. **Issuance of Warrant.** In consideration of Fish's forbearance as contemplated hereby, WYD NE hereby agrees to issue to Fish a Warrant to purchase 75,000 shares of its Common Stock at an exercise price of \$1.25 per share.

5. **Mutual Release.** The parties to this agreement do hereby expressly, voluntarily and immediately release and discharge each-other, their agents, attorneys, officers, directors, subsidiaries, predecessors, successors and assigns, of and from any and all past and present actions, cause of actions, suits, counter-claims, debts, charges, complaints, claims, liabilities, contracts, obligations, damages and expenses, of any nature whatsoever, both in law and in equity or otherwise, from the beginning of the world to the date of this Release, including, but not limited to, all claims asserted or which could have been asserted with regard to legal fees incurred by the Companies for services rendered by Fish prior to August 14, 2006 and excepting only the parties' obligations under and pursuant to this Settlement Agreement.

6. **No Costs Or Fees.** Each of the parties to this Settlement Agreement is to bear, as between themselves, their own costs and attorneys' fees arising from the transactions contemplated by this Settlement Agreement.

7. **Confidentiality.** The parties and their undersigned counsel represent and agree that they will keep the existence, facts and terms of this Agreement, and the Settlement Amount, completely confidential, and that they will not hereafter disclose any information concerning this Agreement or the Settlement Amount to anyone other than (a) as may be required by law by a duly constituted governmental body or tax authority, (b) as may reasonably be necessary in connection with any judicial proceeding arising out of or relating to this Agreement, or (c) as necessary for the purpose of the enforcement of this Agreement. Avalon may also disclose the terms of this Agreement, and the Settlement Amount, to their respective officers, directors and agents, provided that they shall first inform any such persons of the obligation of confidentiality described herein and obtain such persons' agreement in writing to keep the terms of this Agreement and the Settlement Amount completely confidential.

8. **Successors and Assigns.** This Settlement Agreement shall inure to the benefit of and be binding upon the parties, their affiliates, successors, heirs and assigns.

9. **Voluntary and Informed Consent; Authority.** Each party to this Agreement warrants that no promise or inducement to enter into this Agreement has been offered, except as herein set forth and that this Agreement is executed by each party without relying upon any statement or representation by any other party or its representatives, including, but not limited to, any representations concerning the nature and extent of any injury, damages or legal liability. Each party to this Agreement has made such investigation of the facts and law pertaining to this settlement and this Agreement, and of all matters pertaining thereto, as that party deems necessary. Each party also acknowledges that it has been represented by counsel during all stages of this dispute and has acted with the advice of such counsel in executing this

Agreement. Without limitation of the foregoing, the Companies acknowledge that they have not been represented by Fish in connection with the matters contemplated hereby and have obtained independent legal advice. Each party hereto and each person executing this Agreement acknowledges that the terms and conditions of this Agreement have been completely read, and that the terms and conditions are fully understood and voluntarily accepted and in connection therewith, the parties acknowledge that each of them have had the benefit of legal counsel in entering into the same and they warrant, represent and agreed that they, and each of them, understand all of the terms and are voluntarily executing the same of their own free will, without coercion or duress. Each party to this Agreement further represents and warrants that it has full authority to enter into this Agreement.

10. **Joint Drafting.** The parties agree that they have jointly participated in the drafting and preparation of this Agreement, and that the language in this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against either of the parties hereto.

11. **Execution.** This Agreement may be executed by each party on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together constitute but one and the same instrument. Counterparts may be transmitted by the parties to their counsel via telecopier, if convenient to do so, and such counterparts shall be deemed originals, for all purposes.


12. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements, discussions and statements. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party or parties to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed to

constitute a waiver of any other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

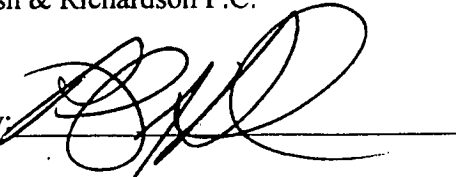
13. **Severability**. If any Paragraph of this Agreement or any portion thereof shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired.

14. **Choice of Law**. This Agreement shall be construed and enforced under the Laws of the Commonwealth of Massachusetts.

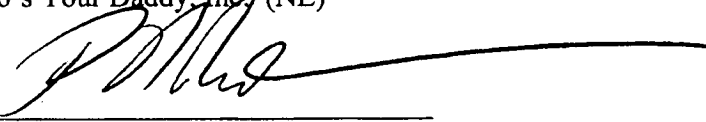
Who's Your Daddy, Inc. (CA)

By: 
Reuven I. Robinson, CFO

Fish & Richardson P.C.

By: 

Who's Your Daddy, Inc. (NE)

By: 
Reuven I. Robinson, CFO

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

PLEASE RETURN TO

CSC
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833
Acct. #10011306

06-7086445181

09/27/2006 14:52



SOS

FILED

CALIFORNIA
SECRETARY OF STATE

9789860010

UCC FILING

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR Who's Your Daddy Inc.

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

3131 Camino Del Rio North

CITY

San Diego

STATE

POSTAL CODE

COUNTRY

CA

92108

1d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR

1e. TYPE OF ORGANIZATION

Corporation

1f. JURISDICTION OF ORGANIZATION

California

1g. ORGANIZATIONAL ID #, if any

NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR Fish & Richardson P.C.

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

225 Franklin Street

CITY

Boston

STATE

POSTAL CODE

COUNTRY

MA

02110

USA

4. This FINANCING STATEMENT covers the following collateral:

Debtor's Trademarks

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. THIS FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		All Debtors Debtor 1 Debtor 2			
8. OPTIONAL FILER REFERENCE DATA						

BJJ # 21-485770-1

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC-1) (REV. 05/22/02) International Association of Commercial Administrators (IACA)

EXHIBIT 2



ADLER
LAW FIRM

101 Montgomery Street
Suite 2050
San Francisco, CA 94104

T 415.433.5333

F 415.433.5334

adlerlaw@adlerlaw.net

www.adlerlaw.net

October 30, 2008

Via USPS Express Mail

Mail Stop Assignment Recordation Services
Director of the USPTO
P.O. Box 1450
Alexandria, VA 22313-1450

**RE: Enclosed Form PTO-1594 & Supporting Documents
Our File No.: 8273**

Assignment Recordation Services:

Enclosed with this letter, please find a Form PTO-1594 submitted by receiving party Fish & Richardson P.C. In addition to the form itself, there are:

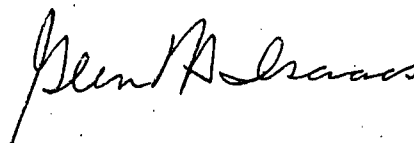
1. ATTACHMENT A, listing 13 trademark serial numbers obtained from TESS;
2. A certified two-page UCC Financing Statement dated September 27, 2006, filed with the California Secretary of State; and
3. A five-page "Settlement Agreement and Release" dated September 27, 2006, executed by conveying party Who's Your Daddy, Inc. and receiving party Fish & Richardson P.C. which, at paragraph 3, grants the receiving party "a first priority security interest in all of the Trademarks owned by it and all associated goodwill."

Please record all these items.

Our check for \$340.00 is enclosed.

Thank you for your attention to this matter, and special thanks to Maurice of your office who was exceptionally helpful.

Yours truly,



GLEN H. ISAACS

Encl.

EXHIBIT 3

Form PTO-1594 (Rev. 09-08)
OMB Collection 0651-0027 (exp. 10/31/2008)

U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

WHO'S YOUR DADDY, INC.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation- State: CALIFORNIA
☐ Other _____

Citizenship (see guidelines) _____

Additional names of conveying parties attached? ☐ Yes ☒ No

3. Nature of conveyance)/Execution Date(s) :

Execution Date(s) SEPTEMBER 27, 2006

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other _____

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? ☐ Yes ☒ No

Name: FISH & RICHARDSON P.C.

Internal

Address: _____

Street Address: 225 FRANKLIN STREET

City: BOSTON

State: MASSACHUSETTS

Country: U.S.A. Zip: 02110

- ☐ Association Citizenship _____
☐ General Partnership Citizenship _____
☐ Limited Partnership Citizenship _____
☐ Corporation Citizenship _____
☒ Other Professional Corp. Citizenship MASSACHUSETTS
 If assignee is not domiciled in the United States, a domestic
 representative designation is attached: ☐ Yes ☐ No
 (Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

SEE ATTACHMENT A

B. Trademark Registration No.(s)

Additional sheet(s) attached? ☒ Yes ☐ No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: GLEN H. ISAACS

Internal Address: _____

ADLER LAW FIRM

Street Address: 101 MONTGOMERY STREET
SUITE 2050

City: SAN FRANCISCO

State: CALIFORNIA Zip: 94104

Phone Number: (415) 433-5333

Fax Number: (415) 433-5334

Email Address: gisaacs@adlerlaw.net

6. Total number of applications and registrations involved:

13

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 340.00

- ☐ Authorized to be charged to deposit account
☒ Enclosed

8. Payment Information:

Deposit Account Number _____

Authorized User Name _____

9. Signature:

Glen H. Isaacs
Signature

OCTOBER 30, 2008

Date

GLEN H. ISAACS, ADLER LAW FIRM, COUNSEL FOR FISH & RICHARDSON P.C.

Name of Person Signing

Total number of pages including cover sheet, attachments, and document:

9

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

EXHIBIT 3

ATTACHMENT A

To Form PTO-1594 submitted by Fish & Richardson, P.C.

Serial Numbers of Trademarks Subject to Security Agreement (13)

78657979

78976525

78696818

78658016

78504067

78504061

76574444

76574445

76574443

76574442

76574441

76574440

76574439

State of California

Secretary of State

I, **Debra Bowen**, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

May 21, 2008

Debra Bowen

Secretary of State

FILE # 067086445181

Document Number: 17042050002

EXHIBIT 3

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

PLEASE RETURN TO

CSC
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833
Acct. #10011306

06-7086445181

09/27/2006 14:52



SOS

FILED

CALIFORNIA
SECRETARY OF STATE

9789860010

UCC FILING

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

Who's Your Daddy Inc.

OR 1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

3131 Camino Del Rio North

CITY

San Diego

STATE

POSTAL CODE

COUNTRY

CA

92108

1d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR

1e. TYPE OF ORGANIZATION

Corporation

1f. JURISDICTION OF ORGANIZATION

California

1g. ORGANIZATIONAL ID #, if any

NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. SEE INSTRUCTIONS

ADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

NONE

3. SECURED PARTY'S NAME [or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P] - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR 3b. INDIVIDUAL'S LAST NAME

Fish & Richardson P.C.

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

225 Franklin Street

CITY

Boston

STATE

POSTAL CODE

COUNTRY

MA

02110

USA

4. This FINANCING STATEMENT covers the following collateral:

Debtor's Trademarks

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable).	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional). All Debtors Debtor 1 Debtor 2					
8. OPTIONAL FILER REFERENCE DATA						

BJJ # 21-485770-1

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC-1) (REV. 05/22/02)

International Association of Commercial Administrators (IACA)

EXHIBIT 3

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made and entered into as of this 27th day of September, 2006 by and between Who's Your Daddy, Inc., a California corporation ("WYD CA"), Who's Your Daddy, Inc., a Nevada corporation ("WYD NE") (WYD CA and WYD NE are collectively referred to herein as the "Companies") and Fish & Richardson P.C. ("Fish").

RECITALS

WHEREAS, the Companies are in arrears in the payment of legal fees to Fish in the amount of \$395,405 as of August 14, 2006; and

WHEREAS, the parties have concluded that it is in their best mutual interest to resolve their issues on the terms set forth below; and

NOW, THEREFORE, in consideration of the promises and covenants set forth in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto expressly agree as follows:

1. Settlement Payments. The Companies have agreed to pay, and Fish has agreed to accept, payment for outstanding legal fees as follows:

(i) one hundred thousand dollars (\$100,000) on or before September 30, 2007, with minimum monthly payments as follows: (a) \$2,500 per month commencing November 1, 2006 until January 1, 2007; (b) \$5,000 per month commencing February 1, 2007 until April 1, 2007; (c) \$7,500 per month commencing May 1, 2007 until July 1, 2007; and (d) \$10,000 per month on August 1, 2007 until September 30, 2007. Any unpaid balance of this \$100,000 shall be paid on September 30, 2007; and

(ii) two hundred thousand dollars (\$200,000) shall be paid at the closing of any financing in which either of the Companies raises an aggregate amount of financing equal to \$3,500,000 or more.

2. **Interest.** In the event that the Companies fail to make any of the payments required hereby, such unpaid amounts shall bear interest at the highest rate permitted by applicable law.

3. **Grant of Security Interest.** WYD CA hereby grants Fish a first priority security interest in all of the Trademarks owned by it and all associated goodwill. Fish shall record a UCC Financing Statement reflecting such security interest. Fish agrees to subordinate its security interest to any bona fide third party lender that provides financing to the Company that results in the payment contemplated by Section 1 (iii) above. Fish shall release its security interest at such time as all amounts payable to it hereunder have been paid.

4. **Issuance of Warrant.** In consideration of Fish's forbearance as contemplated hereby, WYD NE hereby agrees to issue to Fish a Warrant to purchase 75,000 shares of its Common Stock at an exercise price of \$1.25 per share.

5. **Mutual Release.** The parties to this agreement do hereby expressly, voluntarily and immediately release and discharge each-other, their agents, attorneys, officers, directors, subsidiaries, predecessors, successors and assigns, of and from any and all past and present actions, cause of actions, suits, counter-claims, debts, charges, complaints, claims, liabilities, contracts, obligations, damages and expenses, of any nature whatsoever, both in law and in equity or otherwise, from the beginning of the world to the date of this Release, including, but not limited to, all claims asserted or which could have been asserted with regard to legal fees incurred by the Companies for services rendered by Fish prior to August 14, 2006 and excepting only the parties' obligations under and pursuant to this Settlement Agreement.

6. **No Costs Or Fees.** Each of the parties to this Settlement Agreement is to bear, as between themselves, their own costs and attorneys' fees arising from the transactions contemplated by this Settlement Agreement.

7. **Confidentiality.** The parties and their undersigned counsel represent and agree that they will keep the existence, facts and terms of this Agreement, and the Settlement Amount, completely confidential, and that they will not hereafter disclose any information concerning this Agreement or the Settlement Amount to anyone other than (a) as may be required by law by a duly constituted governmental body or tax authority, (b) as may reasonably be necessary in connection with any judicial proceeding arising out of or relating to this Agreement, or (c) as necessary for the purpose of the enforcement of this Agreement. Avalon may also disclose the terms of this Agreement, and the Settlement Amount, to their respective officers, directors and agents, provided that they shall first inform any such persons of the obligation of confidentiality described herein and obtain such persons' agreement in writing to keep the terms of this Agreement and the Settlement Amount completely confidential.

8. **Successors and Assigns.** This Settlement Agreement shall inure to the benefit of and be binding upon the parties, their affiliates, successors, heirs and assigns.

9. **Voluntary and Informed Consent; Authority.** Each party to this Agreement warrants that no promise or inducement to enter into this Agreement has been offered, except as herein set forth and that this Agreement is executed by each party without relying upon any statement or representation by any other party or its representatives, including, but not limited to, any representations concerning the nature and extent of any injury, damages or legal liability. Each party to this Agreement has made such investigation of the facts and law pertaining to this settlement and this Agreement, and of all matters pertaining thereto, as that party deems necessary. Each party also acknowledges that it has been represented by counsel during all stages of this dispute and has acted with the advice of such counsel in executing this

Agreement. Without limitation of the foregoing, the Companies acknowledge that they have not been represented by Fish in connection with the matters contemplated hereby and have obtained independent legal advice. Each party hereto and each person executing this Agreement acknowledges that the terms and conditions of this Agreement have been completely read, and that the terms and conditions are fully understood and voluntarily accepted and in connection therewith, the parties acknowledge that each of them have had the benefit of legal counsel in entering into the same and they warrant, represent and agreed that they, and each of them, understand all of the terms and are voluntarily executing the same of their own free will, without coercion or duress. Each party to this Agreement further represents and warrants that it has full authority to enter into this Agreement.

10. **Joint Drafting.** The parties agree that they have jointly participated in the drafting and preparation of this Agreement, and that the language in this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against either of the parties hereto.

11. **Execution.** This Agreement may be executed by each party on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together constitute but one and the same instrument. Counterparts may be transmitted by the parties to their counsel via telecopier, if convenient to do so, and such counterparts shall be deemed originals, for all purposes.


12. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements, discussions and statements. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party or parties to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed to

constitute a waiver of any other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

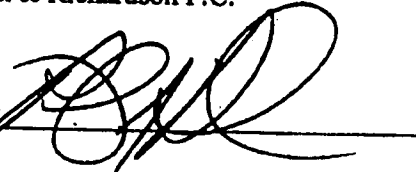
13. **Severability**. If any Paragraph of this Agreement or any portion thereof shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired.

14. **Choice of Law**. This Agreement shall be construed and enforced under the Laws of the Commonwealth of Massachusetts.


Who's Your Daddy, Inc. (CA)

By: 
Reuven I. Rubinson, CFO

Fish & Richardson P.C.

By: 

Who's Your Daddy, Inc. (NE)

By: 
Reuven I. Rubinson, CFO



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

NOVEMBER 03, 2008

PTAS



103533061A

GLEN H. ISAACS
ADLER LAW FIRM
101 MONTGOMERY STREET, SUITE 2050
SAN FRANCISCO, CALIFORNIA 94104UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENTTHE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF
THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS
AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER
REFERENCED BELOW.PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE
INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA
PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD
FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY
CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 571-272-3350.
PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE,
MAIL STOP: ASSIGNMENT SERVICES BRANCH, P.O. BOX 1450, ALEXANDRIA, VA 22313.

RECORDATION DATE: 10/30/2008

REEL/FRAME: 003881/0613
NUMBER OF PAGES: 9

BRIEF: SECURITY AGREEMENT

ASSIGNOR:

WHO'S YOUR DADDY, INC.

DOC DATE: 09/27/2006
CITIZENSHIP: CALIFORNIA
ENTITY: CORPORATION

ASSIGNEE:

FISH & RICHARDSON P.C.
225 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110CITIZENSHIP: MASSACHUSETTS
ENTITY: PROFESSIONAL CORP.APPLICATION NUMBER: 78657979
REGISTRATION NUMBER:FILING DATE: 06/24/2005
ISSUE DATE:

MARK: THE KING OF ENERGY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

EXHIBIT 4

003881/0613 PAGE 2

APPLICATION NUMBER: 78976525
REGISTRATION NUMBER: 3389058

FILING DATE: 10/21/2004
ISSUE DATE: 02/26/2008

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 78696818
REGISTRATION NUMBER: 3212454

FILING DATE: 08/19/2005
ISSUE DATE: 02/27/2007

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 78658016
REGISTRATION NUMBER:

FILING DATE: 06/24/2005
ISSUE DATE:

MARK: WHO'S YOUR DADDY STYLE WITH AUTHORITY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS AND DESIGN

APPLICATION NUMBER: 78504067
REGISTRATION NUMBER: 3011493

FILING DATE: 10/21/2004
ISSUE DATE: 11/01/2005

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 78504061
REGISTRATION NUMBER: 3078885

FILING DATE: 10/21/2004
ISSUE DATE: 04/11/2006

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 76574444
REGISTRATION NUMBER:

FILING DATE: 02/09/2004
ISSUE DATE:

MARK: WHQ'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 76574445
REGISTRATION NUMBER: 3084079

FILING DATE: 02/09/2004
ISSUE DATE: 04/25/2006

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 76574443
REGISTRATION NUMBER: 3084078

FILING DATE: 02/09/2004
ISSUE DATE: 04/25/2006

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 76574442
REGISTRATION NUMBER: 3315070

FILING DATE: 02/09/2004
ISSUE DATE: 10/23/2007

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

003881/0613 PAGE 3

APPLICATION NUMBER: 76574441
REGISTRATION NUMBER: 3084077

FILING DATE: 02/09/2004
ISSUE DATE: 04/25/2006

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 76574440
REGISTRATION NUMBER: 3084076

FILING DATE: 02/09/2004
ISSUE DATE: 04/25/2006

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 76574439
REGISTRATION NUMBER:

FILING DATE: 02/09/2004
ISSUE DATE:

MARK: WHO'S YOUR DADDY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

ALLYSON PURNELL, EXAMINER
ASSIGNMENT SERVICES BRANCH
PUBLIC RECORDS DIVISION

EXHIBIT 4

REC
TI

103533061

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

WHO'S YOUR DADDY, INC.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation- State: CALIFORNIA
☐ Other _____

Citizenship (see guidelines) _____

Additional names of conveying parties attached? ☐ Yes ☒ No

3. Nature of conveyance /Execution Date(s) :

Execution Date(s) SEPTEMBER 27, 2006

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other _____

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? ☐ Yes ☒ No

Name: FISH & RICHARDSON P.C.

Internal

Address: _____

Street Address: 225 FRANKLIN STREET

City: BOSTON

State: MASSACHUSETTS

Country: U.S.A. Zip: 02110

- ☐ Association Citizenship _____
☐ General Partnership Citizenship _____
☐ Limited Partnership Citizenship _____
☐ Corporation Citizenship _____

☒ Other Professional Corp. Citizenship MASSACHUSETTS

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and Identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

SEE ATTACHMENT A

Additional sheet(s) attached? ☒ Yes ☐ No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: GLEN H. ISAACS

Internal Address: _____

ADLER LAW FIRM

Street Address: 101 MONTGOMERY STREET

SUITE 2050

City: SAN FRANCISCO

State: CALIFORNIA Zip: 94104

Phone Number: (415) 433-5333

Fax Number: (415) 433-5334

Email Address: gisaacs@adlerlaw.net

6. Total number of applications and registrations involved:

13

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 340.00

- ☐ Authorized to be charged to deposit account
☒ Enclosed

8. Payment Information:

10/31/2008 MJANA1 00000027 78657979

Deposit Account Number _____

Authorized User Name _____

9. Signature:

Glen H. Isaacs
Signature

OCTOBER 30, 2008

Date

GLEN H. ISAACS, ADLER LAW FIRM, COUNSEL FOR FISH & RICHARDSON P.C.

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 9

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

EXHIBIT 4

Serial Numbers of Trademarks Subject to Security Agreement (13)

78657979
78976525
78696818
78658016
78504067
78504061
76574444
76574445
76574443
76574442
76574441
76574440
76574439



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Thu Nov 6 03:39:30 EST 2008

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [PREV LIST](#) [NEXT LIST](#) [IMAGE LIST](#) [Bottom](#)
[HELP](#)[Logout](#)

Please logout when you are done to release system resources allocated for you.

Start
At:

OR

Jump

to
record:18 Records(s) found (This
page: 1 ~ 18)Refine Search [Submit](#)

Current Search: S1: (live)[LD] AND (WHO'S YOUR DADDY)[COMB] docs: 18 occ: 248

Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1 78976525	3389058	WHO'S YOUR DADDY	TARR	LIVE
2 78853188		WHO'S YOUR DADDY? LOSE YOUR DADDY	TARR	LIVE
3 78696848	3212454	WHO'S YOUR DADDY	TARR	LIVE
4 78658046		WHO'S YOUR DADDY STYLE WITH AUTHORITY	TARR	LIVE
5 78639696	3176312	CAR DADDYS WHO'S YOUR CAR DADDY?	TARR	LIVE
6 78504067	3011493	WHO'S YOUR DADDY	TARR	LIVE
7 78504064	3078885	WHO'S YOUR DADDY	TARR	LIVE
8 78493395	3140149	WHO'S YOUR DADDY	TARR	LIVE
9 78455798	3152813	PO'BOYS CREOLE CAFE "WHO'S YOUR DADDY?"	TARR	LIVE
10 76442951	2727037	HOO'S YOUR DADDY	TARR	LIVE
11 76574444		WHO'S YOUR DADDY	TARR	LIVE
12 76574445	3084079	WHO'S YOUR DADDY	TARR	LIVE
13 76574443	3084078	WHO'S YOUR DADDY	TARR	LIVE
14 76574442	3315070	WHO'S YOUR DADDY	TARR	LIVE
15 76574441	3084077	WHO'S YOUR DADDY	TARR	LIVE
16 76574440	3084076	WHO'S YOUR DADDY	TARR	LIVE
17 76574439		WHO'S YOUR DADDY	TARR	LIVE
18 75654454	2407870	WHO'S YOUR DADDY	TARR	LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [PREV LIST](#) [NEXT LIST](#) [IMAGE LIST](#) [Top](#)
[HELP](#)EXHIBIT 4



BLUEBIRD (888) 477-0700
OFFICE SUPPLIES www.bluebirdonline.com



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Joel D. Adler, State Bar No. 52973 Adler Law Firm 101 Montgomery Street, Suite 2050 San Francisco, CA 94104 Fax No.: (415) 433-5334		TELEPHONE NO.: (415) 433-5333 FOR COURT USE ONLY
ATTORNEY FOR (Name): Fish & Richardson, P.C. Insert name of court and name of judicial district and branch court, if any: San Diego County Superior Court Central Division		APR 01 2009 CLERK - SUPERIOR COURT SAN DIEGO COUNTY, CA
PLAINTIFF/PETITIONER: Fish & Richardson, P.C. DEFENDANT/RESPONDENT: Who's Your Daddy, Inc., a California Corporation, et al		
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Collections		CASE NUMBER: 37-2008-00083932-CU-CL-CTL

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition
 (3) ☐ Cross-complaint filed by (name): on (date):
 (4) ☐ Cross-complaint filed by (name): on (date):
 (5) ☐ Entire action of all parties and all causes of action
 (6) ☒ Other: (specify): * Fifth Cause of Action (Foreclosure of Collateral--Security Interest in Trademark) of Complaint

Date: March 30 2009

JOEL D. ADLER

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for: Fish & Richardson, P.C.

☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for the cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

Attorney or party without attorney for:

☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
 4. ☒ Dismissal entered on (date): APR 01 2009 as to only (name): AS ABOVE
 5. ☐ Dismissal not entered as requested for the following reasons (specify):
 6. ☒ a. Attorney or party without attorney notified on (date): APR 15 2009
 b. Attorney or party without attorney not notified. Filing party failed to provide
☐ a copy to conform ☐ means to return conformed copy

Date: APR 15 2009

Clerk, by A SEAMONS, Deputy

REQUEST FOR DISMISSAL

APR 01 2009

PROOF OF SERVICE BY MAIL

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

I am a citizen of the United States and am employed in the City and County of San Francisco; I am over the age of 18 years and not a party to the within action; my business address is: 101 Montgomery Street, Suite 2050, San Francisco, California 94104.

I am readily familiar with the business practice of the Adler Law Firm for collection and processing of mail with the United States Postal Service, whereby office mail is attached with the appropriate postage and placed in a designated area. Mail so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

Re: *Fish & Richardson P.C. v. Who's Your Daddy, Inc., et al.*
San Diego Superior Court Case No. 37-2008-00083932-CU-CL-CTL
Our File No. 8273

On March 30, 2009, I served the within

Request for Dismissal (Fifth Cause of Action)

on the party below, by placing true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box by first class mail at San Francisco, California, addressed as follows:

Stephen D. Morgan
Shaub & Williams LLP
12121 Wilshire Blvd.
Los Angeles CA 90025

I, Tiffany Brown, declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on March 30, 2009, at San Francisco, California.


Tiffany Brown

EXHIBIT 5

ADLER LAW FIRM
Joel D. Adler (SBN 52979)
Glen H. Isaacs (SBN 139931)
101 Montgomery Street, Suite 2050
San Francisco, CA 94104
Telephone: (415) 433-5333
Facsimile: (415) 433-5334
Email: adlerlaw@adlerlaw.net

Attorneys for Plaintiff
FISH & RICHARDSON, P.C.

F I L E D
Clerk of the Superior Court

MAY 13 2009

By: S. WEAVER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FISH & RICHARDSON, P.C.

Plaintiff,

v.

WHO'S YOUR DADDY, INC., a
California Corporation; WHO'S YOUR
DADDY, INC., which will do business in
California as WYDY, INC., a Nevada
Corporation,

Defendants.

Case No. 37-2008-00083932-CU-CL-CTL

**ORDER GRANTING PLAINTIFF FISH &
RICHARDSON, P.C.'S MOTION FOR
SUMMARY JUDGMENT
[CCP § 437c]**

Date: April 17, 2009

Time: 10:30 a.m.

Dept.: C-73

Judge: Hon. Steven R. Denton

Complaint Filed: May 15, 2008

Trial Date: May 22, 2009

The motion of plaintiff FISH & RICHARDSON, P.C. ("Plaintiff" or "Fish & Richardson") for Summary Judgment, or in the Alternative, Summary Adjudication on its Complaint against defendants WHO'S YOUR DADDY, INC., a California Corporation and WHO'S YOUR DADDY, INC., which will do business in California as WYDY, INC., a Nevada Corporation ("WYD California" and "WYD Nevada," respectively, and collectively "Defendants") came on for hearing on April 17, 2009 at 10:30 a.m. in Department C-73 of the above-entitled court. Plaintiff appeared telephonically through its counsel of record, the Adler Law Firm, by Joel D. Adler. Defendants appeared through their counsel Shaub & Williams, L.L.P., by Stephen D. Morgan.

1 After considering the papers in favor of and in opposition to the motion, and after
2 argument of counsel, the Court rules as follows:

3 Plaintiff's request for judicial notice is **GRANTED**.

4 All of Plaintiff's objections to the evidence of Defendants are **OVERRULED**.

5 Based on the undisputed facts, Plaintiff is entitled to judgment in its favor and
6 against Defendants as a matter of law, and Plaintiff's motion for summary judgment is
7 **GRANTED**.

8 I. REASONS FOR DETERMINATION

9 Plaintiff FISH & RICHARDSON, P.C.'S motion for summary judgment is
10 **GRANTED**, in light of the fact that the fifth cause of action has been dismissed. C.C.P. §
11 437c.

12 The first cause of action is for breach of contract. The essential elements of a
13 cause of action for breach of contract are (1) the existence of a contract, (2) plaintiff's
14 performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting
15 damages to plaintiff. *Reichert v. General Ins. Co.*, 68 Cal. 2d 822, 830 (1968). Here,
16 Plaintiff demonstrates the existence of the contract – the Settlement Agreement and
17 Release – and that the parties entered into the contract on September 27, 2006. See
18 Plaintiff's Separate Statement ["SS"], Fact No. 5. Plaintiff performed by executing the
19 Settlement Agreement, which compromised the amount Defendants owed to Plaintiff. *Id.*
20 at Fact Nos. 5-6.

21 Assuming that the contract is not void, it is undisputed that Defendants breached
22 the Settlement Agreement in two ways. First, Defendants breached by only paying
23 \$35,000, leaving \$65,000 of the initial \$100,000 unpaid. *Id.* at Fact Nos. 7-8.
24 Defendants also agreed to pay Plaintiff \$200,000 of the settlement at the closing of any
25 financing in which Defendants raised an aggregate amount of financing equal to
26 \$3,500,000 or more. See Plaintiff's SS, Fact No. 9. Defendants raised aggregate
27 financing in excess of \$3,500,000 in 2007, but never paid Plaintiff any of the \$200,000
28 due. *Id.* at Fact Nos. 10-11. As a result, Plaintiff is owed \$265,000 under the Settlement

ADLER LAW FIRM
 101 MONTGOMERY STREET, SUITE 2050
 SAN FRANCISCO, CALIFORNIA 94104
 TELEPHONE: (415) 433-5333 FACSIMILE: (415) 433-5334

1 Agreement. *Id.* at Fact No. 12. Plaintiff has met its burden of proving each element of
 2 this cause of action. Defendants claim that the Settlement Agreement is void because
 3 Plaintiff failed to advise Defendants that they had the right to seek independent legal
 4 advice in connection with the Settlement Agreement or that it was advisable to do so.
 5 See Defendants' Responses, Fact Nos. 5, 7-9. Defendants claim that the California
 6 Rules of Professional Conduct (CRPC) 3-300 and 3-400 obligated Plaintiff to advise
 7 Defendants of this information. Plaintiff in Paragraph 9 of the Settlement Agreement did,
 8 however, properly advise Defendants of their right to seek independent legal counsel
 9 prior to execution of the Settlement Agreement. Even if Plaintiff had not properly
 10 advised Defendants in writing of their right to seek the advice of independent counsel,
 11 the case law provided by Defendants indicates that the Settlement Agreement would be
 12 at most *voidable*, not void. See *Mayhew v. Benninghoff III*, 53 Cal.App.4th 1365, 1370
 13 (1997); *Anderson v. Eaton*, 211 Cal.113, 116, 118 (1931).

14 The second cause of action is a claim for open book account for money due
 15 under the Settlement Agreement. An attorney may recover fees and costs in an action
 16 against a former client based upon a book account. *Egan v. Bishop*, 8 Cal.App.2d 119,
 17 122 (1935). C.C.P. § 337a provides the requirements for a book account:

18 The term "book account" means a detailed statement which
 19 constitutes the principal record of one or more transactions
 20 between a debtor and a creditor arising out of a contract or some
 21 fiduciary relation, and shows the debits and credits in connection
 22 therewith, and against whom and in favor of whom entries are
 23 made, is entered in the regular course of business as conducted by
 24 such creditor or fiduciary, and is kept in a reasonably permanent
 25 form and manner

26 It is undisputed that Plaintiff sent Defendants regular monthly bills, and that
 27 Plaintiff's business records are accurately, promptly and routinely made and entered in
 28 the regular course of business. *Id.* at Fact Nos. 15-16. Plaintiff has satisfied its burden of

1 proving each element of this cause of action. Defendant advances the same argument
 2 under this cause of action – that the Settlement Agreement is void, and therefore, a book
 3 account cannot validly be based upon it. As discussed above, the Settlement Agreement
 4 is not void.

5 The third cause of action is also for breach of contract. Plaintiff demonstrates the
 6 existence of a contract between itself and Defendants - the engagement letter dated
 7 February 23, 2005. See Plaintiff's SS at Fact Nos. 28-29. After Plaintiff executed the
 8 Settlement Agreement with Defendants for services rendered through August 14, 2006,
 9 it agreed to continue representing Defendants. *Id.* at Fact No. 34. Plaintiff sent
 10 Defendants two invoices thereafter. *Id.* at Fact No. 35. The first invoice dated
 11 September 23, 2006 was for \$16,334.61, of which \$8,834.61 remains unpaid by
 12 Defendants. *Id.* at Fact Nos. 36, 38. The second invoice dated October 26, 2006 was
 13 paid in full by Defendants. *Id.* at Fact No. 39. Plaintiff has met its burden of proving the
 14 elements of this cause of action.

15 Defendants do not dispute the amounts of the two invoices, nor do they dispute
 16 that they made payments on those invoices. See Defendants' Responses, Fact Nos. 35-
 17 36, 38-39. Rather, Defendants claim that the Settlement Agreement "compromised" the
 18 engagement letter such that it was no longer in effect. *Id.* At Fact Nos. 34, 37.
 19 Defendants allege that since the engagement letter was no longer in effect, in order to
 20 be paid for its provision of legal services, Plaintiff was required to enter into a new fee
 21 agreement with Defendants pursuant to Business and Professions Code Section 6148.
 22 As evidence of this proposition, Defendants cite to portions of the Declaration of Douglas
 23 P. Leu submitted by Plaintiff. See Defendants' Response at Fact Nos. 34, 37. It is clear
 24 from the language of Mr. Leu's declaration, as well as from the Settlement Agreement
 25 itself, that the Settlement Agreement did not compromise the engagement letter for
 26 services provided after August 14, 2006. Rather, the declaration and the Settlement
 27 Agreement state that the Settlement Agreement compromised *Defendants' account as of*
 28 *August 14, 2006*. Defendants do not provide evidence or authority for their contention

1 that the engagement letter was moot after the Settlement Agreement and that a new fee
2 agreement was required. As such, there is no evidence of a triable issue of material
3 fact.

4 The fourth cause of action is for action on an open book account for money due
5 under the engagement letter after August 14, 2006. Plaintiff sent monthly bills to
6 Defendants for its fees and disbursements. See Plaintiff's SS at Fact No. 42. Plaintiff's
7 business records are accurately, promptly and routinely made and entered in the regular
8 course of business. *Id.* at Fact No. 43. Defendants advance the same argument made
9 under the third cause of action – that the Settlement Agreement compromised the
10 engagement letter, and that in the absence of any new fee agreement, Defendants do
11 not owe Plaintiff any amounts under these invoices. For the same reasons as set forth
12 above, this argument is rejected.

13 II. ORDER

14 Based on the undisputed facts, Plaintiff is entitled to judgment in its favor and
15 against Defendants as a matter of law, and Plaintiff's motion for summary judgment is
16 **GRANTED.**

17 **IT IS SO ORDERED.**

18 Dated: May 13, 2009

19 **STEVEN R. DENTON**

20 HON. STEVEN R. DENTON
21 Judge of the Superior Court

22
23 Approved as to Form:

24
25 _____
26 Stephen D. Morgan
27 Shaub & Williams
28 Counsel for Defendants
WHO'S YOUR DADDY, INC., a California Corporation and
WHO'S YOUR DADDY, INC., which will do business in California
as WYDY, INC., a Nevada Corporation

ADLER LAW FIRM
Joel D. Adler (SBN 52979)
Glen H. Isaacs (SBN 139931)
101 Montgomery Street, Suite 2050
San Francisco, CA 94104
Telephone: (415) 433-5333
Facsimile: (415) 433-5334
Email: adlerlaw@adlerlaw.net

Attorneys for Plaintiff
FISH & RICHARDSON, P.C.

F I L E D
Clerk of the Superior Court
JUN 11 2009
By: S. WEAVER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FISH & RICHARDSON, P.C.,
Plaintiff,

v.

WHO'S YOUR DADDY, INC., a
California Corporation; WHO'S YOUR
DADDY, INC., which will do business in
California as WYDY, INC., a Nevada
Corporation,

Defendants.

Case No. 37-2008-00083932-CU-CL-CTL

JUDGMENT

Complaint Filed: May 15, 2008

On May 13, 2009, this Court issued its Order granting the motion of Plaintiff FISH & RICHARDSON, P.C. for summary judgment against defendants WHO'S YOUR DADDY, INC., a California Corporation and WHO'S YOUR DADDY, INC., which will do business in California as WYDY, INC., a Nevada Corporation (collectively "Defendants"), made under Code of Civil Procedure §437c, on the ground that there is no triable issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law. In accordance with that Order,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Fish & Richardson, P.C. shall recover from Defendants, jointly and severally, the principal amount of \$273,834.61, plus interest in the amount of \$74,816.57 through May 21, 2009,

1 for judgment in the total amount of \$348,651.18, plus continuing interest at the legal rate
2 on that judgment from May 21, 2009 as provided by law.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff is entitled
4 to recover its costs of suit as the prevailing party in this action. Such costs shall be
5 added to the judgment as provided by law. *plus costs of 1788.34 awarded*

6 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

7 Dated: *Sum* May 11, 2009

8
9 **STEVEN R. DENTON**

10 STEVEN R. DENTON

11 Judge of the Superior Court

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
ADLER LAW FIRM
101 MONTGOMERY STREET, SUITE 2050
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (415) 433-5333 FACSIMILE: (415) 433-5334

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED**I. (a) PLAINTIFFS**

FISH & RICHARDSON, P.C., a Massachusetts Professional Corporation

DEFENDANTS

WHO'S YOUR DADDY, INC., a California Corporation

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Joel D. Adler/Adler Law Firm, 101 Montgomery Street, Suite 2050,
San Francisco, CA 94104; 415/433-5333**09 CV 1993 W POR****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C.A. section 1338(a)Brief description of cause:
Foreclosure on trademarks**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/09/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

5081

AMOUNT

\$350.00

APPLYING IFP

JUDGE

MAG. JUDGE

CR

MS 9/11/09

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS005081
Cashier ID: msweaney
Transaction Date: 09/11/2009
Payer Name: ADLER LAW FIRM

CIVIL FILING FEE

For: FISH V WHOS YOUR DADDY, INC
Case/Party: D-CAS-3-09-CV-001993-001
Amount: \$350.00

CHECK

Check/Money Order Num: 9124
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.